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8 Attorneys for Petitioner
9 ASTRO PAK CORPORATION

10
11 BEFORE THE CALIFORNIA
12 STATE WATER RESOURCES CONTROL BOARD
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14 IN THE MATTER OF THE PETITION OF
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16 ASTRO PAK CORPORATION
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18 California Regional Water Quality Control
19 Board, Los Angeles Region
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No. _____

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

(Cal. Water Code § 13320; Cal.
Code Regs., tit. 23 §§ 2050 *et seq.*)

INTRODUCTION

Petitioner ASTRO PAK CORPORATION (“Petitioner”) is a small company that conducts high-precision industrial components cleaning operations. Petitioner is the owner and operator of a facility at 8700-8708 Cleto Street, Downey, California (the “Site”), which is located within an area with mixed industrial, commercial and residential land uses. Initial investigations of the Site beginning in 1991 revealed that historical operations on the Site had resulted in releases of TCE and PCE. Based on this initial Site characterization work, on June 19, 2002 the Los Angeles Regional Water Quality Control Board (“Regional Board”) issued Cleanup and Abatement Order (“CAO”) No. R4-2002-086, requiring Petitioner to investigate and cleanup both on-Site and off-Site contamination.

Petitioner has diligently complied with this CAO, delineating the extent of both on-Site and off-Site contamination, and remediating both soil and groundwater impacts, all at a cost of many millions of dollars. This work, now spanning close to a decade, has involved extensive source control and groundwater remediation, including soil excavation by excavator (approximately 300 tons), soil excavation by bucket auger (approximately 520 tons), soil vapor extraction (in operation from 2004 to present), on-Site and off-Site potassium permanganate injection, sodium permanganate injection, and ozone injection.¹ Petitioner has also installed an extensive network of groundwater monitoring wells, both on-Site and off-Site, from which data are collected, analyzed and submitted to the Regional Board on a quarterly basis.²

Importantly, Petitioner has implemented this robust remediation and monitoring program under the close supervision and approval of Regional Board staff for many years—namely, Case Manager, Don Indermill, as well as his supervisory Unit Chief,

¹ See, e.g., First Quarter 2010 Groundwater Monitoring and Remediation Progress Report, dated May 2010 by Murex Environmental, on file at the Regional Board as part of the administrative record in this case.

² See *id.*

1 Dixon Oriola—both of whom were quite capable and knowledgeable about the conditions
2 at the Site, as well as those in the surrounding area. Indeed, these staff worked closely
3 with Petitioner and its environmental consultant in reviewing and approving Petitioner's
4 work for these many years, consistently finding Petitioner to be fully cooperative and
5 Petitioner's work to be appropriate, thorough and effective. In short, under this direction
6 and guidance, Petitioner has successfully characterized the extent of both on-Site and off-
7 Site contamination, and the most recent data show that Petitioner's remediation measures
8 have successfully contained further off-Site migration of groundwater contamination,
9 reducing the TCE and PCE concentrations at the southern edges of the groundwater plume
10 to below MCLs.

11 Unfortunately, seemingly out of nowhere, comes ARCADIS—the current operator
12 of the former NASA Industrial plant, located at 12214 Lakewood Blvd., Downey, CA
13 (“NASA Site”), 1200 feet from Petitioner's Site. The NASA Site has had significant TCE
14 and PCE releases over the years that have contaminated the regional groundwater, though
15 it has never been under a CAO or directive from the Regional Board. ARCADIS has
16 installed a network of monitoring wells along and off-site of the NASA Site's northern
17 border to track its plume, which wells are as close as 150 feet of Petitioner's monitoring
18 wells. ARCADIS has operated the NASA Site since 2003 under a type of service contract
19 known as a Guaranteed Remediation Program “GRiP” by which remedial success and
20 regulatory closure is guaranteed to the client—in this case International Risk Assumption
21 Downey, LLC (“IRAD”), the current NASA Site owner. In other words, the profits
22 ARCADIS planned to make from the GRiP contract at the NASA Site are directly related
23 to the effectiveness of their remedial program and securing site closure from the Regional
24 Board.

25 Having apparently approached or exceeded its fixed contract amount, ARCADIS
26 approached the Regional Board in August of 2008 and tried to convince staff to shift the
27 responsibility for the VOC plume emanating from the NASA Site to Petitioner.
28 Specifically, ARCADIS requested that the Regional Board take immediate action to

1 control what it claimed was continuing migration of VOCs from Petitioner's Site onto the
2 NASA Site. Regional Board staff did not agree and Mr. Indermill and Mr. Oriola did not
3 accommodate ARCADIS' requests.

4 Having failed to persuade Regional Board staff, ARCADIS next sent a written
5 demand to Petitioner dated January 21, 2010, with a copy to then Regional Board
6 Executive Officer Tracy Egoscue, threatening to sue Petitioner on the unsupported
7 allegations that contaminants originating from Petitioner's Site have migrated to the
8 NASA Site. Notably, ARCADIS has not seen fit to follow through on its threatened
9 action, as the data simply do not support its contentions. Nevertheless, its letter may have
10 achieved its intended purpose in that contemporaneous with its January 21, 2010 letter,
11 Mr. Indermill and Mr. Oriola (along with their extensive knowledge of both sites) were
12 suddenly and inexplicably removed from this case and replaced with new staff.
13 Subsequent to this reassignment, the Regional Board's Executive Officer Tracy Egoscue
14 issued a directive to Petitioner pursuant to California Water Code section 13267 dated
15 April 27, 2010 ("Directive"), requiring Petitioner to "completely" delineate its plume and
16 to propose measures to mitigate further off-Site migration of VOCs. Petitioner responded
17 to the Directive by letter dated May 7, 2010. To complete the record in this regard,
18 Petitioner notes that Ms. Egoscue resigned from the Regional Board within a few days of
19 sending the Directive.

20 As described below, the Regional Board's Directive fails to comply with the
21 requirements of Section 13267. In addition, the requirements of the Directive are
22 unnecessary as the data demonstrate that Petitioner has already sufficiently characterized
23 its plume and mitigated the off-Site impacts. Notably, in stark contrast to the costly and
24 effective investigation and remediation work the Regional Board has required Petitioner
25 to perform pursuant to the CAO issued to it in 2002, *the Regional Board has so far failed*
26 *to issue a CAO, or even a directive, to ARCADIS, the current NASA Site operator, or to its*
27 *client IRAD, the current NASA Site owner, with respect to the significant contamination*
28 *emanating from the NASA Site.*

1 Accordingly, Petitioner hereby petitions the State Water Resources Control Board
2 ("State Board") for review of the Regional Board's Directive. This petition for review
3 ("Petition") is brought pursuant to the provisions of Water Code section 13320 and Title
4 23 of California Code of Regulations sections 2050 *et seq.*

5 PETITION FOR REVIEW

6 I. NAME AND ADDRESS OF PETITIONER

7 Astro Pak Corporation
8 c/o Mr. Kenneth Verheyen, President
9 270 East Baker Street, Suite 100
Costa Mesa, CA 92626
(949) 270-0800

10 II. SPECIFIC ACTION OF THE REGIONAL BOARD

11 This Petition seeks review of the Regional Board's Directive ordering Petitioner to
12 submit a work-plan for a further delineation of the groundwater contamination originated
13 from the Site, and for mitigation measures to contain any further off-Site migration of
14 VOC contamination ("Technical Report"). A true and correct copy of the Regional
15 Board's April 27, 2010 Directive is attached hereto as **Exhibit 1**. Petitioner's May 7,
16 2010 response to the Directive is attached hereto as **Exhibit 2**.

17 III. DATE OF THE REGIONAL WATER BOARD ACTION

18 April 27, 2010.

19 IV. STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE AND 20 IMPROPER

21 The Regional Board's Directive is inappropriate and improper because, among
22 other things, this action: (1) fails to satisfy the specific requirements of California Water
23 Code section 13267; (2) is arbitrary and capricious; (3) is unsupported by technical and
24 scientific evidence; and (4) is inconsistent with the State Board's decisions, rules and
25 policies. Petitioner more fully explains these reasons below in Section VII of this
26 Petition, which is incorporated herein by reference.
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1 boundary.⁴ Notwithstanding these additional contamination sources, and exacerbating
2 “remediation” technologies, Petitioner has been singled out by the Regional Board and is
3 currently the sole entity in this area that has been issued a CAO, or a Directive, even
4 though, or possibly because, Petitioner has fully cooperated with the Regional Board in
5 implementing effective remedial measures over the course of nearly 10 years now. This
6 discriminatory conduct by the Regional Board is unfair and harmful to Petitioner.

7 **VI. SPECIFIC ACTION REQUESTED BY PETITIONER**

8 Petitioner respectfully requests that the State Board:

9 (a) Rescind the Regional Board’s April 27, 2010 Directive requiring that Petitioner
10 submit a Technical Report pursuant to California Water Code section 13267.

11 (b) Hold an evidentiary hearing on the Regional Board’s challenged actions.

12 (c) Allow Petitioner to supplement the record with such additional evidence as is or
13 may become available. Petitioner will identify such additional evidence once the record is
14 prepared by Regional Board.

15 (d) Petitioner reserves the right to further request any and all actions authorized in
16 California Water Code section 13320.

17 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

18 **A. The Regional Board’s Directive Fails to Comply with the Requirements of**
19 **Section 13267**

20 Pursuant to California Water Code section 13267, the Regional Board may only
21 require submission of “technical or monitoring program reports” where:

22 “The burden, including costs, of these reports shall bear a reasonable
23 relationship to the need for the report and the benefits to be obtained from

24 ⁴ ARCADIS has chosen to implement enhanced reductive dechlorination, using native
25 bacteria, fed by a carbohydrate solution, to break down the groundwater contaminants. In order
26 to do so, hundreds of thousands of gallons of this proprietary carbohydrate solution have been
27 injected into a network of wells within the NASA Site source area each quarter, since 2005. This
28 technology is unproven, and Petitioner’s consultants believe it succeeds only in reducing the
contaminants to their more stable form, 1,2-DCE. Worse yet, the injection of such large volumes
of liquid is likely displacing the contaminants within the NASA site source areas in all directions.

1 the reports. In requiring those reports, the regional board shall provide the
2 person with a written explanation with regard to the need for the reports, and
3 shall identify the evidence that supports requiring the person to provide the
4 reports.” Cal. Water Code § 13267(b)(1).

5 The Regional Board has not even attempted to justify the significant cost
6 associated with the Technical Report it has requested; nor could it justify such cost in any
7 event, because such further work is unnecessary, and could serve no useful purpose.
8 Further, the Regional Board has not provided a “written explanation” of the need for the
9 additional site assessment outlined in the Directive; nor has it identified “the evidence”
10 that supports requiring Petitioner to submit the requested Technical Report.

11 Instead, the Regional Board’s Directive merely states that Petitioner’s “recent
12 quarterly monitoring reports and other case records” show that the off-Site groundwater
13 contamination has not been completely delineated. But this general statement is not
14 evidence, and thus, is insufficient for purposes of Section 13267. Indeed, the Regional
15 Board fails to identify any data contained in the many reports and case materials in the
16 record that might support its bare conclusion, let alone explain why the Technical Report
17 requested is necessary in light of these data. The Regional Board must comply with
18 Section 13267 and provide a written explanation for why it believes the work it now
19 requires is justified and identify the evidence supporting this conclusion.

20 **B. The Technical Report Requested by the Regional Board is Unnecessary**

21 The Regional Board’s Directive requests a Technical Report outlining measures
22 Petitioner must undertake to (1) achieve a complete delineation of the groundwater
23 contamination originating from the Site; and (2) mitigate further off-Site migration of
24 VOC contamination. But such a Technical Report would have little or no benefit, and is
25 unnecessary in light of the extensive and effective investigation and mitigation work
26 Petitioner has already performed over the course of the last eight years pursuant to the
27 existing CAO. Indeed, under the close supervision and approvals of Regional Board staff,
28 Petitioner has spent almost a decade delineating the extent of both on-Site and off-Site

1 contamination, and mitigating the contamination both on and off Site. The data collected
2 over these many years demonstrate that these efforts have been successful.⁵

3 Remarkably, the Regional Board's Directive wholly ignores this long history of
4 cleanup activity in requiring that Petitioner implement measures to mitigate off-Site
5 migration of VOCs, as if Petitioner was starting from scratch at the Site. Of course, this
6 same Regional Board (or its staff, at least) has been intimately involved in the
7 development of the mitigation measures implemented both on and off the Site, has
8 specifically approved such measures, and has concurred in the effectiveness of these
9 measures for many years in light of the significant data demonstrating their effectiveness.
10 For some reason, the Regional Board has suddenly reversed course, but its Directive does
11 not explain why the program it has already approved is now suddenly insufficient. In
12 reality, the totality of the data compiled over nearly a decade of very expensive work, and
13 contained in the administrative record, demonstrate that Petitioner has been successful in
14 mitigating both on-Site and off-Site contamination. The Regional Board's request that
15 Petitioner implement measures to mitigate further off-Site migration of contaminants is
16 inappropriate as well as unnecessary.

17 Similarly, the Regional Board's open-ended Directive mandating that Petitioner
18 submit a Technical Report to completely delineate the off-Site contamination makes no
19 sense given the status of this Site cleanup. In fact, given the contamination migrating
20 from the NASA Site toward Petitioner's wells, it is not even technologically feasible to try
21 and do so, let alone cost-effective or necessary. *Sufficient* delineation work has already
22 been performed—indeed, this investigation and delineation work, as guided and approved
23 by Regional Board staff, preceded and informed the remedial action that has been
24 undertaken (as is typically the case, in accordance with Regional Board standard
25 procedures, for that very reason). Based on the extensive work performed by Petitioner,
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27 ⁵ See, e.g., First Quarter 2010 Groundwater Monitoring and Remediation Progress Report,
28 dated May 2010 by Murex Environmental.

1 the effective boundaries of Petitioner's off-Site plume have been known for many years,
2 and have been confirmed by the extensive data produced in Petitioner's quarterly
3 monitoring reports. These data are collected from twenty-four (24) monitoring wells that
4 have been strategically placed to monitor the effectiveness of the remedial action
5 undertaken, and show the edges of the plume to a reasonable degree of certainty.⁶

6 Moreover, in addition to the monitoring activities conducted by Petitioner,
7 ARCADIS has installed a large network of groundwater monitoring wells to monitor the
8 significant contamination emanating from the neighboring NASA Site. In particular,
9 ARCADIS has installed five (5) wells along the northern boundary of the NASA Site to
10 track the significant 1,2-DCE plume, as well as TCE and PCE, that has emanated from the
11 NASA Site in all directions, including off-site across the northern boundary toward
12 Petitioner's wells. The data from these ARCADIS monitoring wells provide further
13 confirmation that the TCE and PCE contamination from Petitioner's Site is contained, and
14 has attenuated below MCLs before reaching the NASA Site boundary.⁷

15 In sum, the Regional Board's Directive that further plume delineation be performed
16 by Petitioner makes no sense in light of the data and the significant network of monitoring
17 wells that exist downgradient of the Site. The Regional Board has improperly disregarded
18 these facts in issuing the Directive, which should be rejected because the work called for
19 is of no benefit, inappropriate and unnecessary.

20
21 **C. The Regional Board's Directive is Misplaced Given the Impacts to the**
22 **Groundwater From the Neighboring NASA Site**

23 The Regional Board's Directive is also misplaced. As discussed above, the
24 "remediation" methods performed by ARCADIS for the last several years have resulted in
25 a significant 1,2-DCE plume that is adversely affecting the regional groundwater

26 ⁶ See, e.g., First Quarter 2010 Groundwater Monitoring and Remediation Progress Report,
27 dated May 2010 by Murex Environmental.

28 ⁷ See administrative record for the NASA Site on file with the Regional Board.

1 conditions. Indeed, ARCADIS' 1,2-DCE plume has now migrated to certain of
2 Petitioner's monitoring wells. In light of the failure of ARCADIS' remedial program,
3 which has caused and exacerbated groundwater contamination on and beyond the northern
4 boundary of the NASA Site, if any further delineation—or even mitigation measures—in
5 that area is needed, the proper course of action is for the Regional Board to issue a CAO
6 or directive to the responsible parties at the NASA Site. Singling out Petitioner to do
7 further or “complete” plume delineation work on ARCADIS's behalf—its GRiP contract
8 notwithstanding—is not only misplaced, but unlawful and unfair.

9 **VIII. LIST OF INTERESTED PARTIES**

10 Petitioner has identified and has served this Petition on the Regional Board and the
11 following additional interested parties as follows:

12 Samuel Unger
13 Interim Executive Officer
14 California Regional Water Quality
15 Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

16 Jeffrey Hu
17 California Regional Water Quality
18 Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

19 Philip Nicolay
20 ARCADIS
1400 North Harbor Boulevard, Suite 700
21 Fullerton, CA 92835

22 **IX. STATEMENT THAT COPIES OF PETITION HAVE BEEN SENT TO THE
REGIONAL BOARD**

23 Copies of this Petition have been served on the Los Angeles Regional Water
24 Quality Control Board.

25 **X. STATEMENT THAT ISSUES RAISED IN THE PETITION WERE PRESENTED TO
26 THE REGIONAL BOARD**

27 All substantive issues and objections raised in this Petition have been raised before
28 the Regional Board, or Petitioner was not required to raise them, or was unable to raise

1 them below because Petitioner was unaware of them and could not have reasonably been
2 aware of them in time to raise them before the Regional Board, or because the Regional
3 Board unreasonably curtailed the amount of time Petitioner was given to raise issues
4 before the Regional Board.

5 **XI. REQUEST FOR PREPARATION OF THE ADMINISTRATIVE RECORD.**

6 By copy of this Petition to the Executive Officer of the Regional Board, Petitioner
7 hereby requests the preparation of the administrative record herein.

8 **XII. REQUEST FOR HEARING**

9 Petitioner requests that the State Board hold a hearing in this matter.

10 **XIII. STATEMENT OF ADDITIONAL EVIDENCE**

11 Petitioner requests that it be permitted to supplement the record before the State
12 Board. Petitioner will advise the State Board more specifically in this regard once the
13 record has been prepared by the Regional Board, and it knows what matters have not been
14 included by the Regional Board.

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16 Respectfully Submitted,

17 Dated: May 27, 2010

WINSTON & STRAWN LLP

18
19 By: _____

Joseph J. Armao

20 Attorneys for Petitioner
21 ASTRO PAK CORPORATION
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EXHIBIT 1



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

April 27, 2010

Mr. Ken Verheyen
President
Astro Pak Corporation
12201 Pangborn Ave.
Downey, CA 90241-5612

**REQUIREMENTS FOR SUBSURFACE INVESTIGATION AND CLEANUP PURSUANT TO
CLEANUP AND ABATEMENT ORDER NO. R4-2002-086 – ASTRO PAK CORPORATION, 8700-
8708 CLETA STREET, DOWNEY, CALIFORNIA (SCP NO. 0302E, SITE ID# 2044E00, FILE NO.
97-78)**

Dear Mr. Verheyen:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of groundwater and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura Counties, including the referenced site. Under the oversight of this Regional Board, you have been conducting various site investigation, remediation, and groundwater monitoring activities.

You are subject to a Cleanup and Abatement Order (CAO) No. R4-2002-086 issued to ASTRO PAK Corporation (ASTRO PAK) on June 19, 2002, pursuant to California Water Code sections 13267 and 13304. CAO No. R4-2002-086 directed ASTROPAK, as the responsible party, to investigate, cleanup and abate soil contamination and groundwater pollution at and groundwater pollution emanating from the subject facility at 8700-8708 Cleta Street, in Downey, California.

Your recent quarterly groundwater monitoring reports and other case records show that you have not completely delineated the offsite groundwater contamination emanated from the release of volatile organic compounds (VOCs) at the referenced site, including VOC-contamination beyond cross-gradient monitoring well MW-12 and down-gradient monitoring wells MW-20 and MW-22. You shall submit a work plan for a complete delineation of the groundwater contamination originated from the referenced site.

In addition to the ongoing groundwater cleanup efforts, you shall propose mitigation measures, in your work plan, to achieve plume containment so that any further offsite migration of the VOC-contamination can be prevented.

Pursuant to section 13267 of the CWC, you are required to submit the work plan by **June 18, 2010**. Pursuant to section 13268 of the CWC, failure to submit the required technical report by the specified due date may result in civil liability administratively imposed by the Regional Board in an amount up to one thousand dollars (\$1000) for each day the technical report is not received.

Please note that effective immediately, the Regional Board requires you to include a perjury statement in all reports submitted under 13267 Order and CAO. The perjury statement shall be signed by a senior

California Environmental Protection Agency



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Mr. Ken Verheyen
ASTRO PAK Corporation
Downey, CA

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April 27, 2010

authorized representative at ASTRO PAK (and not by consultant). The statement shall be in the following format:

" I, [NAME], do hereby declare, under penalty of perjury under the laws of State of California, that I am [JOB TITLE] for Bodycote Thermal Processing that I am authorized to attest to the veracity of the information contained in [NAME AND DATE OF REPORT] is true and correct, and that this declaration was executed at [PLACE], [STATE], on DATE."

The State Water Resources Control Board (State Water Board) adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. You are required not only to submit hard copy reports required in this Order, but also to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at the URL: http://www.waterboards.ca.gov/ust/cleanup/electronic_reporting/docs/final_electronic_regs_dec04.pdf.

As presented in State Water Resources Control Board Resolution 92-49, professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. Moreover, the final report submitted to this Regional Board must be reviewed, signed and stamped by a California registered geologist, or a California registered civil engineer with at least five years hydrogeologic experience. Furthermore, the California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. Therefore, all future work must be performed by or under the direction of a registered geologist or registered civil engineer. A statement is required in the final report that the registered professional in responsible charge actually supervised or personally conducted all the work associated with the work plan and final report.

We believe that the burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. If you disagree and have information about the burden, including costs, of complying with these requirements, provide such information in writing to Mr. Jeffrey Hu within ten days of the date of this letter so that we may reconsider the requirements.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

California Environmental Protection Agency



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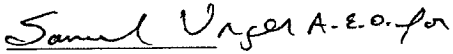
Mr. Ken Verheyen
ASTRO PAK Corporation
Downey, CA

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April 27, 2010

If you have any questions regarding this project, please contact Jeffrey Hu of my staff at (213) 576-6736 or ghu@waterboards.ca.gov.

Sincerely,


Tracy J. Egoscue
Executive Officer

CC:

Jennifer Fordyce, State Water Resources Control Board, Office of Chief Counsel
John Youngerman, State Water Resources Control Board, Division of Water Quality
Chris Nagler, Watermaster - California Department of Water Resources
United States Environmental Protection Agency, Region 9, Permits Branch (WTR-5)
United States Army Corps of Engineers
Kurt Souza, Department of Health Services, Drinking Water Field Operation Branch
Los Angeles County, Department of Public Works, Waste Management Division
Los Angeles County, Department of Health Services
South Coast Air Quality Management District
California Department of Toxic Substance Control, Cypress
California Department of Transportation
Philip Nicolay, ARCADIS

California Environmental Protection Agency



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EXHIBIT 2



ASTRO PAK®

astropak.com

VIA E-MAIL AND U.S. MAIL

May 7, 2010

Jeffrey Hu
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

**Re: CAO No. R4-2002-086
Astro Pak Corporation, 8700-8708 Cleta Street, Downey, CA
(SCP No. 0302E, Site ID#2044E00, File No. 97-78)**

Dear Mr. Hu:

First, I am happy to report that the preliminary results of our off-site vapor survey have been received, and the samples show non-detect downgradient from the site. This good result is just as our consultant had expected, given the many years of source removal, soil vapor extraction, source control and containment measures Astro Pak has implemented, and the data generated from all that work.

You will recall that we agreed to incur the costs of such additional work not because we believed it necessary, but because you had requested it in your first meeting with our consultant on February 16, 2010 when you had just taken over as newly assigned case manager. As has been the case every time Regional Board staff has requested that we perform a task, our cooperation and responsiveness has been exemplary. Our consultant's report regarding these confirmatory results is being prepared and will follow.

As to the more immediate reason I am writing you now, I have received your Regional Board's April 27, 2010 letter requiring Astro Pak to submit a technical workplan outlining additional measures to be taken to achieve a complete delineation of groundwater contamination originating from the site, as well as mitigation measures to achieve plume containment of any further off-site migration of VOC contamination. I am not happy to see that our many years of full cooperation with Regional Board staff and the expenditure of monies that

my small company could barely afford, is being rewarded with a letter directive seemingly "out of nowhere" in failing to recognize what has already been addressed at the site.

At page 2 of the letter the Regional Board offers to reconsider these new requirements if we disagree with its view that the costs of these requirements bear a reasonable relationship to the need for them and the benefits obtained. We respectfully and strongly disagree, and thus do request a reconsideration.

As you know, Astro Pak has been actively engaged in significant cleanup and abatement activities at the site for almost a decade. In fact, Astro Pak has fully complied for these many years with the conditions of the above-referenced 2002 CAO in removing and remediating the subject contamination, as well as investigating, characterizing and monitoring the off-site groundwater conditions. All this was done under the direction and approval of Regional Board staff—namely, Case Manager, Don Indermill, and his supervisory Unit Chief, Dixon Oriola.

Astro Pak is a small company that has spent what is quickly approaching \$4 Million implementing these measures. In the context of this surprising April 27 letter directive, please note that these costly measures have already effectively addressed the source control goals for this site, successfully contained further off-site migration of contaminants from the site, and have also delineated to the extent possible, and certainly as cost-effectively as possible, the extent of groundwater contaminants emanating from the site.

Significantly, the data that has been collected demonstrates the existence of multiple additional sources of VOC contamination to the groundwater surrounding the Astro Pak site, resulting in crossgradient, upgradient, and downgradient contamination not originating from the Astro Pak site. To our knowledge, the Regional Board has not required these sources of releases of VOC-contaminants to undertake source removal or containment, let alone any off-site plume delineation or mitigation measures. Given this multi-source setting, requiring "complete" delineation by Astro Pak is not technologically feasible, and in any event, would be prohibitively costly as an endless exercise with little to no benefit to the environment. As a small company with very limited revenues, Astro Pak barely has sufficient funds to continue operating its site control and containment measures.

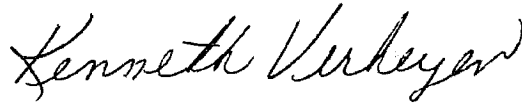
Mr. Indermill and Mr. Oriola understood all this from their many years directing and approving our work and the knowledge they gained of site conditions and the surrounding area. Unfortunately, they and their knowledge were suddenly removed from this case a few months ago. Coincidentally, this occurred contemporaneous with my receiving a letter dated January 21, 2010, from a lawyer for Arcadis threatening to sue Astro Pak on unsupported allegations that contaminants originating at Astro Pak have migrated onto a site they are currently trying to clean up. Apparently, Arcadis took on such site remediation for a fixed price that has now been exceeded, and they have been unsuccessful in getting site closure from your Regional Board. As you know, the lawyer expressly copied the Regional Board on that threatening letter. My concern, therefore, is that while Arcadis has not seen fit to sue Astro Pak, they are trying instead to use your agency to do their work for them and avoid the costs of trying to prove their case. To our knowledge, Arcadis has not, and has not been required to, delineate

pg 2

the full extent of VOC contaminants that have migrated off their northern site boundary caused by their own operations at the site.

In this context, and for the reasons set forth above, I request a formal reconsideration of this matter and look forward to hearing the results of this review as soon as possible. In the meantime, my attorney has advised me that we may be forced to file a petition with the State Board to protect Astro Pak's rights and preserve our defenses.

Sincerely,



Kenneth Verheyen
President
Astro Pak Corporation

By DL

cc: Tracy J. Egoscue, Executive Officer, LA Regional Board